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115 CMR: DEPARTMENT OF MENTAL RETARDATION

115 CMR 2.00: DEFINITIONS

Section

2.01: Definitions

2.01: Definitions

As used in 115 CMR, the following terms shall have the following meanings:

Adaptive behavior means the quality of everyday performance in coping with environmental demands (what people do to take care of themselves and to relate to others in daily living).

Adequate means, with respect to services or supports, that they are in compliance with the regulations of the Department or of the agency of the Commonwealth with legal responsibility for licensure or regulation.

Antipsychotic medication means medication that is used to treat a thought disorder of psychotic proportions as defined in the *Diagnostic and Statistical Manual of Mental Disorders*, 4th edition, as revised or in subsequent editions and revisions, of the American Psychiatric Association, and which has been designated by medical authorities as belonging to the class of medications categorized as antipsychotic medication.

Appropriate means, with respect to a service or support or facility, that it is sufficient to provide the quality and quantity of staff, assistance, intervention, and environment to meet the individual's needs or objectives indicated in his or her ISP. With respect to an intervention strategy, "appropriate" means designed to achieve the desired goal or objective.

Area of service means the geographical area determined by the Department to be the locality for the organization, coordination, and provision of services and supports to an individual. The principle consideration is the preference of the individual. Other factors considered in determining an individual's area of service are:

- (a) the individual's needs;
- (b) the availability of appropriate services or supports within a given locality;
- (c) the location of the individual's family and friends; and
- (d) if the individual is under 22 years of age, the location of the city or town in Massachusetts responsible for providing special education under M.G.L. c. 71B, as amended.

Area office means the locally based office of the Department, and the employees therein, responsible for the organization, coordination, and provision of services or supports to individuals whose area of service falls within that office's geographical scope as designated by the Department.

Arranged by the Department means, with respect to services or supports, made available to the individual through referral by the Department to agencies, organizations, or persons other

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than facilities, services or supports operated, licensed, certified, or contracted by the Department.

Authorized physician means any physician who has been authorized by the head of a provider to order chemical restraint, mechanical restraint, or physical restraint, and to examine individuals in such restraint.

Authorized staff person means any member of the staff who is authorized by the head of the provider and trained to order mechanical restraint or physical restraint pursuant to 115 CMR 5.04(4)(b)2..

Available means, with respect to a facility, service or support, that the provider has the staff, resources, assistance, and space to meet the needs or objectives indicated in an individual's ISP and has not been designated for another individual with a higher priority of need for services or supports.

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Behavior Modification shall have the meaning set forth at 115 CMR 5.10.

Capable of Evacuation means the capability of an individual to exit his or her residence to grade level within 2½ minutes with or without assistance.

Certification means verification by the Department of the quality of providers' services and supports described at 115 CMR 8.01(3)(b) based upon their compliance with certification standards and quality outcomes for individuals set forth at 115 CMR 7.03 or the approval issued by the Department to a licensed provider with respect to certain behavior modification treatments.

Chemical Restraint (*see* Restraint).

Closely Related Developmental Conditions means genetic, neurodevelopmental or physical disorders that have a significant overlap with mental retardation, and result in similar support needs. For the purposes of 115 CMR 6.06(1), closely related developmental conditions include:

- (a) Williams Syndrome
- (b) Prader-Willi Syndrome
- (c) Lesch-Nyhan Syndrome
- (d) Angelman Syndrome
- (e) Cri du Chat Syndrome
- (f) Down Syndrome
- (g) Fragile X Syndrome
- (h) Cerebral Palsy
- (i) Pervasive Developmental Disorders including the following specified autism spectrum disorders: Autistic Disorder, Rett's Syndrome, Childhood Disintegrative Disorder, and Pervasive Developmental Disorder-Not Otherwise Specified (NOS)
- (j) Spina Bifida (Myelomeningocele type "MMC")
- (k) Tuberous Sclerosis
- (l) Fetal Alcohol Syndrome

Chemical Restraint (*see* Restraint).

Commissioner means the Commissioner of the Department of Mental Retardation.

Community means a city, town, district, neighborhood, or other commonly recognized geographical or political area.

Community Living Supports means a variety of support models designed to support individuals living in the community. Community Living Supports may include state plan services including adult foster care or group adult foster care with DMR-funded wrap around services or community habilitation supports to individuals residing on their own home, or

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enhanced family supports consisting of DMR-funded staff supports for an individual living in his family home.

Community Resources means workplaces, businesses, places of worship, social groups, consultants, health care facilities or professionals, places for recreation or entertainment, and other facilities, professionals, or supports generally available to the population-at-large within a community.

Community 24-Hour Residential Supports means DMR funded staff supports provided 24 hours per day in a residence that is licensed by the Department.

Competent in Fact means being capable of making informed decisions in specific areas regarding the conduct of one's personal and/or financial affairs.

Consent means voluntary approval given by the word, or implied by the action of a person with adequate information and sufficient understanding to comprehend the consequences of the decision.

Department means the Department of Mental Retardation.

Designated Representative means a person who has come forward as an advocate for the individual's interests, or whom the individual has, through consent, chosen as a representative, in connection with the development and review of the ISP, who is not otherwise disqualified from taking an appeal therefrom, and who is acknowledged by the Department to be the designated representative for the individual in connection with such service planning, in accordance with 115 CMR 6.31(3) or 6.41(3).

Emergency Restraint means "restraint" as that term is used in M.G.L. c. 123B, § 15, and includes the three categories of emergency restraint, further defined below.

(a) Mechanical Restraint. Mechanical restraint is any limitation of movement achieved by means of a physical device, subject to the following exceptions:

1. Mechanical restraint does not include devices needed to achieve proper body position, balance, or alignment;
2. Mechanical restraint does not include health-related protections ordered by a physician if absolutely necessary during a specific medical or dental procedure or if necessary for the individual's protection during the time that a medical condition exists.
3. Mechanical restraint does not include a device used to limit movement pursuant to a behavior modification plan reviewed and approved in accordance with 115 CMR 5.10.

(b) Physical Restraint. Physical restraint is any limitation of movement achieved by means of direct bodily contact between the individual and staff, subject to the following exceptions:

1. Physical restraint does not include comforting or gentle holding of an individual by a staff person for no more than five minutes, provided that if physical force is used to overcome the active resistance of the individual held or to interrupt then-occurring movement by the individual toward a particular destination, or more than two staff

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persons are holding the individual, then the procedure is not a comforting or gentle holding but instead constitutes physical restraint, regardless of the length of time the individual is being held.

2. Physical restraint does not include physically escorting or guiding the individual to a particular destination, provided that if physical force is used to overcome the active resistance of the individual held or to interrupt then-occurring movement by the individual toward a particular destination, then the procedure is not an escort or a guide but instead constitutes physical restraint.

3. Physical restraint does not include bodily holding as a health-related protection ordered by a physician if necessary during a specific medical or dental procedure or for the individual's protection during the time that a medical condition exists.

4. Physical restraint does not include a limitation of movement pursuant to a behavior modification plan reviewed and approved in accordance with 115 CMR 5.10.

(c) Chemical restraint. Chemical restraint is the non-consensual use of medication, not for treatment, but for the purpose of impairing the individual's freedom of movement, subject to the following exceptions:

1. Chemical restraint does not include administrations of medication necessary to prevent immediate grievous bodily harm or death.

2. Chemical restraint does not include administrations of medication determined by a licensed physician, who has examined the individual, to be necessary to prevent immediate, substantial, and irreversible deterioration of mental health.

3. Chemical restraint does not include administrations of antipsychotic medication for treatment purposes in accordance with the requirements and procedures for extraordinary treatment that have been established by the Massachusetts Supreme Judicial Court in *Rogers v. Commissioner of the Department of Mental Health* and in related cases.

Facility (formerly referred to as a "state school" and referenced in M.G.L. c. 19B, §§ 7 through 10, 12 as such) means, unless otherwise specified, any of the facilities operated by the Department listed in 115 CMR 3.03. This definition does not apply within the context of 115 CMR 3.06 governing charges for care or within the context of 115 CMR 2.01: Community resources.

Facility Director means the chief executive officer of a facility and also is intended to mean the "superintendent" referenced in M.G.L. c. 19B, §§ 8, 10 and throughout M.G.L. c.123B.

Family means parents, foster parents, spouses, siblings, and others who perform the roles and functions of family members in the life of an individual, including persons in a relationship of mutual support with an individual that is exclusive and expected to endure over time.

Generic service means services, supports, or treatment options generally available to the population-at-large with or without special accommodations for persons with mental retardation.

Goals mean long-range outcomes generally expected to be achieved by an individual within five years and stated in measurable terms so that their attainment can be determined. Goals

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are developed from an evaluation of the individual's present performance, abilities and desires as these relate to what society expects of persons of the same age and culture who do not have disabilities.

Governing board means the group of individuals that constitute the governing body of a provider.

Guardian means, with respect to persons under the age of 18 years, a natural or adoptive parent, or the individual or agency with legal guardianship of the person; and with respect to persons 18 years of age and older, the individual, organization or agency, if any, that has been appointed legal guardian of the person by a court of competent jurisdiction.

Habilitation means the process by which an individual is assisted to acquire and maintain those life skills necessary to cope more effectively with personal and environmental demands or to improve physical, mental, and social competencies.

Head of the Provider means the person with executive responsibility for the operation of the provider's agency, services, or supports. Where a provider operates at more than one location, "head of the provider" includes the person with responsibility for the operation at a particular location. Where the provider is a facility, the head of the provider is the facility director.

Hold or Holding means any limitation of movement of an individual by bodily contact or mechanical device which falls outside of the definition of restraint (because it meets the criteria of one of the exceptions to physical or mechanical restraint set forth at 115 CMR 2.01: Emergency Restraint).

Individual means, except where otherwise specified, a person receiving services or supports provided, purchased, or arranged by the Department.

Individual Service Plan or ISP means a written plan of services or supports for an individual, which is developed, implemented, reviewed, and modified according to the requirements of the Department's regulations on individual service plans.

Intervention Strategy means a training or teaching procedure, a manipulation or change of environment or the provision of supports designed to teach or assist an individual to achieve a goal or a specific objective. Depending on its content, an intervention strategy may also fall within the definition of a behavior modification intervention set forth under 115 CMR 5.10.

Knowing Objection means the act of an individual in rejecting a choice, made with a reasonable degree of awareness of the likely consequences of his or her act.

Least Restrictive means those settings, modes of service, and styles of living or working that are most similar to and most integrated with what is typical and age-appropriate in the community, and which interfere the least with the individual's independence.

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Legal Representative or Legally Authorized Representative means, with respect to an individual, an attorney representing the individual in connection with a particular matter, a court appointed trustee, conservator, or guardian *ad litem* representing the interests of the individual in connection with particular matters, or the individual's guardian.

Legally Competent or Presumed Competent means, for individuals 18 years of age or older, not having been declared by a court to be incapable of making informed decisions with respect to the conduct of one's personal and/or financial affairs.

License means the legal authorization to provide services or supports described in 115 CMR 8.02(1) to persons with mental retardation required by M.G.L. c. 19B.

Licensee means the individual, agency, or other legal entity licensed by the Department.

Limitation of Movement or LOM means any restriction on the movement of an individual for the protection of that individual or others or in accordance with a behavior modification plan meeting the requirements of 115 CMR 5.10. Limitations of movements can be categorized on the basis of the reason for the limitation. Each category has its own requirements for implementation of the LOM. The five categories are:

- (a) Emergency restraint; (*See* 115 CMR 2.01; 5.04);
- (b) Transportation restraint; (*See* 115 CMR 5.04; 5.05);
- (c) Support needed to achieve proper body position, balance, or alignment; (*See* 115 CMR 22.22(1)(a));
- (d) Health-related protections; (*See* 115 CMR 22.22(1)(b), (2)((c)));
- (e) Holds implemented in accordance behavior modification plans; (*See* 115 CMR 2.30; 5.10);

Mechanical Restraint (*See* Emergency Restraint)

Mental Retardation means significantly sub-average intellectual functioning existing concurrently and related to significant limitations in adaptive functioning. Mental retardation manifests before age 18. A person with mental retardation may be considered to be mentally ill as defined in 104 CMR (Department of Mental Health), provided that no person with mental retardation shall be considered to be mentally ill solely by reason of his or her mental retardation.

Minor means a person under the age of 18.

Non-self-medicating means personally using medication in the manner directed by the prescribing practitioner only with assistance or direction by program or facility staff, in accordance with Department standards. (*See* "self-medicating".)

Objective means short term outcomes stated in behavioral or otherwise measurable terms, expected to be achieved through the provision of a particular service or support, the implementation of a particular intervention strategy, or a change of modification of the environment.

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Physical restraint (*See* Emergency Restraint)

Provided by the Department means made available to the individual directly through employees of the Department at Department expense.

Provider means the individual, agency or other legal entity with day-to-day responsibility for the operation of services or supports or facilities regulated by the Department by law or contract. In accordance with the foregoing definition, a provision which applies to "providers" applies with equal force to the Department's service, supports, or facilities, unless otherwise specified.

Purchased by the Department means made available to an individual through a contract between the Department and a private or other non-Departmental entity.

Region means, depending on the context:

- (a) a grouping of area offices as determined by the Commissioner;
- (b) the geographic area represented by such a grouping; or
- (c) the office established by the Commissioner as appropriate to supervise area offices within a grouping of area offices and to perform administrative or service functions for the geographic area represented by the grouping.

Research means a systematic investigation designed to develop or contribute to generalizable knowledge and involving access to human subjects or private information, with the exceptions set forth in 115 CMR 10.00.

Self-medicating means personally using medication in the manner directed by the prescribing practitioner, without assistance or direction by program or facility staff, in accordance with Department standards. A verbal reminder that the time for taking a dose of medication has arrived does not constitute assistance or direction by program staff.

Service coordinator means the person designated by the Department to arrange, coordinate, or monitor, or to remain informed about, services or supports provided, purchased, or arranged by the Department for a particular individual and to be responsible for the development of an ISP for the individual.

Services means a system of formalized supports, generic or specialized.

Severe Functional Impairments means functional impairments in at least three specified areas of adaptive functioning, based upon normative expectations of the types of skills normally acquired as the child develops, as measured by standardized assessment or comparable data. The areas of adaptive functioning considered are: self-care, communication (receptive or expressive language), learning, mobility, and self-direction and, for individuals age 14 years or older, capacity for independent living and economic self-sufficiency.

Significant Limitations in Adaptive Functioning means an overall composite adaptive functioning limitation that is two standard deviations below the mean of the appropriate norming sample determined from the findings of assessment using a comprehensive,



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standardized measure of adaptive behavior, interpreted by a qualified practitioner. The domains of adaptive functioning that are assessed shall be: 1) areas of independent living/practical skills, (2) cognitive, communication, and academic /conceptual skills, and 3) social competence/social skills.

Significantly Sub-average Intellectual Functioning means an intelligence test score that is indicated by a score of 70 or below as determined from the findings of assessment using valid and comprehensive, individual measures of intelligence that are administered in standardized formats and interpreted by qualified practitioners.

Supports means those resources and strategies that promote the interests and causes of individuals with or without disabilities; that enable them to access resources, information, and relationships inherent in integrated work and living environments; and that result in their enhanced independence, productivity, community integration, and satisfaction.

Supportive Services mean day supports, day habilitation, individual supports and family supports.